

Case No. Z6000(V)

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application.

I. Claim Objections

The Examiner has objected to claims 2-5, 8, 9 and 11. Regarding claims 2-5, 8 and 9, the Examiner mentions that "the group consisting of" appears to be missing.

Notwithstanding this, Applicants wish to respectfully point out to the Examiner that a series of claim elements concluding with an "or" is commonly used in lieu of a series of claim elements identified as a group consisting of wherein the next to last element and the last element are separated by an "and". Thus, it is submitted that the claims do present appropriate Markush language. Regarding claim 11, Applicants appreciate the Examiner's feedback and have amended the claim accordingly.

Based on the foregoing, it is respectfully requested that the objections to the claims be withdrawn and rendered moot.

II. Rejection Under 35 USC §102

The Examiner has rejected claims 1-13 of the 35 USC §102(e) as being anticipated by Brown, U.S. Patent No. 6,578,763 (hereinafter '763). In the rejection, the Examiner mentions, in summary, that the '763 reference discloses the selling of a consumer product in a package that can be retained and refilled. In view of this, the Examiner believes that the 35 USC §102(e) rejection is warranted.

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Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Independent claim 1, as amended, is directed to a method for purchasing a consumer product comprising the steps of (a) selling a consumer product in a package to a consumer at a point of purchase establishment; (b) instructing the consumer to retain the package after the consumer product has been consumed; and (c) providing a means for the consumer to have the package refilled with consumer product wherein the product is sold at a sale price that includes a predetermined number refills.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the type of consumer product that can be purchased, the type of establishment that can sell the consumer product, packaging types, the characteristics of the packaging, the characteristics of the consumer product, and a specific mathematical formula that satisfies the method of purchasing such that a consumer saves money while simultaneously protecting the environment.

In contrast, the '763 reference merely discloses a refillable bottle that is refilled in a machine with readable indicia on a container whereby the machine dispenses a discount coupon so that the consumer can use the coupon to pay the vendor at each and every refilling. The present invention, as now defined in independent claim 1, is directed to a method whereby the consumer only has to pay the vendor a single time and the single sale price includes a predetermined number of refills. Thus, the present invention is significantly more efficient than the process defined in the '763 reference which merely shows a method for vending a specific liquid consumer product whereby the consumer has to pay a vendor at every refill. Furthermore, there is nothing in the

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'763 reference that suggests that the product being sold can be in a form other than a liquid.

In view of the above, it is clear that all of the important and critical limitations set forth in the presently claimed invention, as now amended, are not found in a single prior art source, namely the '763 reference. Therefore, an anticipatory rejection made under 35 USC §102(e) is proper and must be withdrawn.

III. Rejection Under 35 USC §103

The Examiner has rejected claim 7 under 35 USC §103(a) as being unpatentable over Brown, U.S. Patent No. 6,578,763 (hereinafter '763) in view of Duvall, U.S. Patent No. 5,522,428 (hereinafter '428). In the rejection, the Examiner mentions, in summary, that claim 7 is directed to a package which is refilled a predetermined number of times whereby the predetermined number of times is less than a number that causes stress fracture in the package. The Examiner relies on the '428 reference in combination with the '673 reference and notes that the '428 reference mentions filling and refilling under pressure as a function of the life of the container. Even further, the Examiner informally mentions Gomez et al., U.S. Patent No. 5,319,003 (hereinafter '003), Humele et al., U.S. Patent No. 6,599,569 (hereinafter '569) and Herman et al., U.S. Patent No. 4,090,394 (hereinafter '394) for essentially disclosing plastic bottles and thermoplastic bottles.

In view of the above, the Examiner believes that the 35 USC §103 rejection is warranted.

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Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention as set forth in independent claim 1, as amended, is directed to a method for purchasing a consumer product wherein the product is sold at a sale price that includes a predetermined number of refills. Thus, the consumer only needs to make one payment at the point of purchase for all predetermined number of refills.

The '763 reference, on the other hand, teaches a method for refilling a container wherein the consumer must take a coupon dispensed from a refill machine and pay the vendor at each refill. There is nothing in the primary reference, namely the '763 reference, that even remotely discloses the convenient refill method as set forth in the presently claimed invention. Moreover, regarding refills and stress fractures as set forth in claim 7, the '003 reference does not cure any of the deficiencies of the primary reference since (1), it does not address the refilling a package a predetermined number of times after making a single payment and (2), the present invention is not concerned with pressurizing a package to be sold for use in a consumer's household. Clearly, consumer products, like laundry detergents and fabric softeners, are not sold in pressurized containers. Furthermore, since the '569 reference and '003 reference merely disclose plastic containers, the same in any viable combination with the primary reference does not cure any of the vast deficiencies of the combination of references relied on by the Examiner. In view of this, it is clear that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. Applicants, therefore, request that the rejection made under 35 USC §103 be withdrawn and rendered moot.

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IV. Rejection Under 35 USC §103

The Examiner has rejected claim 11 under 35 USC §103 as being unpatentable over Brown, U.S. Patent No. 6,578,763 (hereinafter '763) and Littlejohn, U.S. Patent No. 6,553,353 (hereinafter '353). In the rejection, the Examiner mentions, in summary, that the '763 reference discloses the claimed method but for prepaying and the '353 reference cures the deficiencies of the primary reference by disclosing prepaying for certain amounts of power. In view of this, the Examiner believes that the 35 USC §103 rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a method for purchasing a consumer product wherein the product is purchased at a sale price that includes a predetermined number of refills. As already made of record, the primary reference, namely the '763 reference, only discloses a refilling system that requires the use of coupons and the consumer making a payment at every refill. The deficiencies of the primary reference are not cured by the '353 reference which merely discloses a non-analogous system directed to regulating and billing of utilities by a customer. Clearly, the combination of references relied on by the Examiner does not teach the method set forth in claim 1 as amended. Particularly, claim 1 in combination with claim 11 specifically describe a method where one payment is made, a predetermined amount of fillings are made, and a consumer pays less money by using a refillable package. Thus, the obviousness rejection should be withdrawn.

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Moreover, the Examiner has asked for the origin for the formula set forth in claim 11. Applicants respectfully wish to point out that the formula forms the basis of the invention wherein one purchase is made, a predetermined number of refills are made, and the price for those refills is less than buying the same amount of product in a new bottle or package each time. It is also noted that the present invention invariably results in a safer and cleaner environment since less packaging is discarded.

Applicants now submit that all claims of record are ready to be passed to issue. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned at his earliest convenience.

Respectfully submitted,



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